

STATUS OF THE CLAIMS

Claims 9-51 are pending in the Application.

Claims 9-51 have been rejected, herein.

Claims 1-32 have been cancelled, without prejudice, herein.

Claims 33, 39 and 47 have been amended herein.

REMARKS

Response After Final

Entry of this Response is respectfully requested on the ground that this Response places the application in condition for allowance. Alternatively, entry of this Response is respectfully requested on the ground that this Response places the claims in better form and condition for appeal. Furthermore, Applicant submits that any arguments made regarding the claims herein do not require an additional search on the part of the Office, nor do any arguments made herein raise new issues with regard to the patentability of the claims now pending.

Rejections under 35 U.S.C. § 102(b)

Claims 33-42 and 47-50 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Atkins (GB 2,299,568). Claims 39-42, 48 and 49 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Holden-Banks (GB 2,311,273). Applicant respectfully traverses this rejection for at least the following reasons.

35 U.S.C. § 102(b) recites:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

In addition, “a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *See*, MPEP 2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Regarding claim 33, Applicant respectfully submits that Atkins does not teach or suggest a method for making a device for labeling an object comprising the providing of a substantially planar member having a portion for evidencing potential tampering of a capped opening of the object when the device is affixed about the periphery of the object, as recited in claim 33. Further, Applicant has amended this element to assure that the type of tamper evidencing as claimed is to ***the opening of the object***, not merely tampering with the label and any potential information provided by the label.

There is absolutely nothing in the entire disclosure of Atkins, no less page 6, line 26 to page 7, line 5 as cited by the present Office Action, in which the concept of evidencing potential tampering of a capped opening of the object to which the device is affixed. However, should the Examiner somehow maintain that “tear lines 14, 16 are formed by means of a perforator.” (Atkins at page 7, lines 2-3) relates to evidencing potential tampering, Applicant refers the Examiner to Atkins at page 5, lines 18-26, wherein Atkins states:

In order to obtain access to the information contained in the leaflet portion 6, it is first necessary to remove the strip 18. This may be readily done because the adhesive in this area has been desensitized, to form the non-adhesive section 24. The two notches 26 provides a lead in to one end of the perforations 14, 16 to facilitate removal of the strip 18. The removal of the strip 18 separates the two ends of the carrier label 4 and thereby provides tamper evidence.

It should be readily evident that the provided tamper evidence as disclosed by Atkins relates to tampering *with the label, and not with a capped opening* of the object to which the label is attached. In contrast to the disclosure of Atkins, Applicant refers the Examiner to Figures 10-12 and 18, and the descriptions of Figures 10-12 and 18 in the Specification of the present Application. There, an exemplary embodiment of the device to which the claimed method relates is shown having a feature, device or means for evidencing tampering of product prior to consumption by an end user. As depicted, this feature, device or means extends a portion of the upper edge of the device, creating a physical means for alerting a user of the labeled object *that the capped opening of the object, not merely the label*, has been tampered with. For example, in Figures 10-12, it can be seen that the tamper evidencing portion wraps around at least a portion of the cap of the capped opening of the object. The tamper evidencing portion of the device depicted in Figure 18 functions in the same manner as that shown in Figures 10-12.

It should be readily apparent that the teachings of Atkins contain no such feature, device or means for evidencing tampering of a capped opening of an object to which the device is affixed. Not only is Atkins silent on the entire concept of evidencing tampering of the capped opening of the object, but it can be seen that, in every figure of the Atkins patent, the label exclusively contains single, parallel upper and lower edges, such that the label is shaped exclusively as a rectangle when attached to any sort of container, and further is placed nowhere near the capped opening of the object to which it is attached. As seen in *at least* Figures 10-12

and 18 of the present Application, the label assembly is *not exclusively* rectangular, due to the presence of a feature, device or means for evidencing tampering of a capped opening of the object to which the device is affixed.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 102(b) rejection of Claim 33. Further, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 102(b) rejections of Claims 34-38, as these claims ultimately depend on a distinct, independent Claim 33.

Regarding Claim 39, Applicant respectfully submits that neither Atkins nor Holden-Banks teaches or suggests a method for making a device for labeling an object comprising the providing of a substantially planar member having first and second portions, wherein the second portion overlaps at least a portion of the first portion around the periphery of the object, where the first portion of the member is oriented at an oblique angle relative to the second portion, and the second portion maintains a substantially similar width across the length of the second portion, as recited in claim 39. Further, Applicant has amended claim 39, to more clearly put forth the type of oblique angle to which the portions of the device lie with respect to each other.

There is absolutely nothing in the entire disclosure of Atkins, no less page 6, line 26 to page 7, line 5, as cited by the present Office Action, in which the concept of a first portion of a label is oriented at an oblique angle relative to a second portion of the label. Other than flap 11 and strip 18 of the label of Atkins, Applicant notes that every label depicted in the figures of Atkins includes a substantially straight upper and lower edges. At the very most, these portions could be considered nothing more than tapered, and in no way lie at an oblique angle relative to

the remaining portion of the label, and furthermore, do carry a substantially similar width across the length of their respective portions.

Similarly, Holden-Banks teaches a tapered label, wherein the width of the tapered portion decreases or increases incrementally over the entire length of the label. Thus, Holden-Banks does not teach a first and second portions wherein the two portions are at an oblique angle relative to each other, and where the second portion maintains a substantially similar width across the length of the label.

Applicant refers the Examiner to Figure 18, and the descriptions of Figure 18 in the Specification of the present Application. There, an exemplary embodiment of the device to which the claimed method relates is shown having a first portion 1812 and a second portion 1817. It can be seen that these two portions are at an oblique angle relative to each other, and that the second label portion maintains a substantially similar width across its length.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 102(b) rejection of Claim 39. Further, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 102(b) rejections of Claims 40-42 and 47-50, as these claims ultimately depend on a distinct, independent Claim 39.

Rejections under 35 U.S.C. 103(a)

Claims 9-11, 13 and 14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Atkins (GB 2,299,568) in view of Walter (U.S. Patent No. 5,591,290) and Holden-Banks (GB 2,311,273). Claim 12 has been rejected under 35 U.S.C. § 103(a) as being

unpatentable over Atkins in view of Walter and Holden-Banks as applied to claim 9, and further in view of Kaufmann (U.S. Patent No. 5,264,265). Claims 15-22, 24 and 26-31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Holden-Banks in view of Kaufmann. Claims 23, 25 and 32 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Holden-Banks in view of Kaufmann as applied to Claims 15 and 26, and further in view of Atkins. Claims 43-46 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Holden-Banks as applied to Claims 1 and 39, and further in view of Kaufmann. Claim 50 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Holden-Banks as applied to Claims 1 and 49, and further in view of Atkins. Claim 47 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Holden-Banks in view of Kaufmann as applied to Claim 46, and further in view of Atkins. Claim 51 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Holden-Banks in view of Atkins as applied to Claim 50, and further in view of Kaufmann. Claims 43-46 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Atkins as applied to Claims 1 and 39, and further in view of Kaufmann. Applicant respectfully traverses these rejections for at least the following reasons.

35 U.S.C. §103(a) recites:

[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the

knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). MPEP 706.02(j).

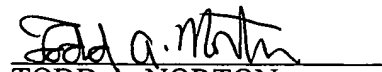
For at least the reasons set forth above, both Atkins and Holden-Banks, either separately or in combination, fail to teach or suggest the limitations of amended independent Claim 39. Specifically, they fail to teach or suggest a method for making a device for labeling an object comprising the providing of a substantially planar member having first and second portions, wherein the second portion overlaps at least a portion of the first portion around the periphery of the object, where the first portion of the member is oriented at an oblique angle relative to the second portion, and the second portion maintains a substantially similar width across the length of the second portion, as recited in Claim 39. Further, Applicant respectfully submits that Kaufmann, like Atkins and Holden-Banks, fails to teach or suggest a method for making a device for labeling an object comprising the providing of a substantially planar member having first and second portions, wherein the second portion overlaps at least a portion of the first portion around the periphery of the object, where the first portion of the member is oriented at an oblique angle relative to the second portion, and the second portion maintains a substantially similar width across the length of the second portion. Kaufmann teaches a peel-back re-sealable multi-ply label that has straight top and bottom edges along the entire length of the label, creating, in essence, a single rectangular label. Thus, there is no oblique angle disclosed anywhere in the drawings or written disclosure.

Accordingly, Applicant respectfully submits that all elements of Claim 39 are patently distinguishable over each of Atkins, Holden-Banks and Kaufmann, at least because these references, either separately or in any combination, fail to teach or suggest a method for making a device for labeling an object comprising the providing of a substantially planar member having first and second portions, wherein the second portion overlaps at least a portion of the first portion around the periphery of the object, where the first portion of the member is oriented at an oblique angle relative to the second portion, and the second portion maintains a substantially similar width across the length of the second portion, as recited in Claim 39. Applicant further submits that Claims 43-47 and 50-51, and for that matter, all of Claims 40-51, are similarly distinguishable over the cited references, by virtue of their ultimate dependency from a patently distinct base Claim 39.

Conclusion

Wherefore, Applicant believes he has addressed all outstanding grounds raised by the Examiner and respectfully submits the present case is in condition for allowance, early notification of which is earnestly solicited. Should there be any questions or outstanding matters, the Examiner is cordially invited and requested to contact Applicant's undersigned attorney at his number listed below.

Respectfully Submitted,



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